should be permitted to allege directly that one of the two defendants — the owner or the hirer — is the party answerable to him on the ground of *respondeat superior*, and that he submits it to the court or jury to determine which.

THE APPLICATION OF BULK SALES STATUTES. — Since 1901 over forty states have passed statutes to the general effect that a sale in bulk of a large part or the whole of a stock of merchandise shall be void as against creditors of the vendor, unless the parties have complied with rather elaborate requirements in the way of giving notice. These statutes are not uniform,[1] and some were at first held unconstitutional;[2] but they are now almost[3] unanimously considered valid.[4] Yet in the construction of these statutes it is noticeable that the courts are by no means agreed. Thus the recent case of *Swift & Co.* v. *Tempelos*[5] held that the North Carolina statute did not apply to the sale of a restaurant together with the goods and fixtures therein, while under the Washington statute the contrary was decided.[6] Again, apparently a statute including "fixtures pertaining to the business" does not apply to the sale by a retail coal dealer of his coal bags, wagons, and safe,[7] while a statute not including fixtures does apply to the sale of a soda fountain by a retail druggist.[8] There is also a conflict over the meaning of the words "shall be presumed fraudulent and void," some courts holding that a rule of substantive law is thus established,[9] while others regard

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Rules, Order XVI. See also Rule 8 of the NEW JERSEY PRACTICE ACT (1912). Suits in the alternative are suggested in the PROPOSED SIMPLIFICATION OF THE NEW YORK CODE (1919), p. 12.

[1] For a summary of the different forms, see L. R. A. 1915 E, 917.

[2] Wright *v.* Hart, 182 N. Y. 330, 75 N. E. 404 (1905); Off *v.* Morehead, 235 Ill. 40, 85 N. E. 264 (1908); McKinster *v.* Sager, 163 Ind. 671, 72 N. E. 854 (1904); Block *v.* Schwarz, 27 Utah, 387, 76 Pac. 22 (1904); Miller *v.* Crawford, 70 Ohio St. 207, 71 N. E. 631 (1904).

[3] The Utah statute made a sale without the required notice a misdemeanor, and no new statute has been passed. In Ohio the original statute was changed to make the sale only presumptively fraudulent instead of void, but was still held unconstitutional. Williams *v.* Preslo, 84 Ohio St. 328, 95 N. E. 900 (1911).

[4] In some states, changes pursuant to the expressed opinion of the courts were made in the statutes, which were thereafter declared constitutional. Sprintz *v.* Saxton, 126 App. Div. 421, 110 N. Y. Supp. 585 (1908); Johnson Co. *v.* Beloosky, 263 Ill. 363, 105 N. E. 287 (1914); Hirth-Krause Co. *v.* Cohen, 177 Ind. 1, 97 N. E. 1 (1912). In others the statutes in their original forms have been held constitutional. Kidd, D. & P. Co. *v.* Musselman Grocer Co., 217 U. S. 461 (1910); Young *v.* Lemieux, 79 Conn. 434, 65 Atl. 436 (1907); Lemieux *v.* Young, 211 U. S. 489; McGray *v.* Woodbury, 110 Me. 163, 85 Atl. 491 (1912); Squire *v.* Tellier, 185 Mass. 18, 69 N. E. 312 (1904); Kett *v.* Masker, 86 N. J. L. 97, 90 Atl. 243 (1914); Neas *v.* Borches, 109 Tenn. 398, 71 S. W. 50 (1902).

[5] 101 S. E. 8 (N. C.). See RECENT CASES, p. 731, *infra*.

[6] Plass *v.* Morgan, 36 Wash. 160, 78 Pac. 784 (1904). The Washington statute, however, reads, "the sale of *any* stock of merchandise."

[7] Bowen *v.* Quigley, 165 Mich. 337, 130 N. W. 690 (1911).

[8] Young *v.* Lemieux, *supra*. But see *contra*, Lee *v.* Gillen, 90 Neb. 730, 134 N. W. 278 (1912).

[9] Moore Dry Goods Co. *v.* Rowe, 97 Miss. 775, 53 So. 626 (1910); Daly *v.* Sumpter Drug Co., 127 Tenn. 412, 155 S. W. 167.

such a statute as constitutional largely on the ground that it creates only a rule of evidence, not necessarily conclusive.[10]

Such diversity of construction leads to the suspicion that there is little real need for remedial statutes of this nature. Before the Federal Bankruptcy Act there was undoubtedly a serious evil. If an insolvent retail dealer could suddenly and secretly sell his stock in bulk, not only was it difficult for his creditors to find out what had been done with the proceeds, but the debtor could often make preferences which the remaining creditors were unable to defeat.[11] But the National Bankruptcy Act obviates both these dangers, by providing for a speedy discovery of assets [12] and by making a preference by an insolvent debtor an act of bankruptcy [13] and voidable.[14] Thus these statutes are of little use except in cases where the seller is solvent at the time of the sale, or where the purchaser acts *bona fide* and the seller absconds. The first application is hard on the seller. Among other results it leads to his being unable to recover the purchase price on a sale in violation of the statute until all his debts are paid.[15] The second application is in derogation of the ordinary law of fraudulent conveyances [16] and seems unduly hard on the purchaser. Of course, such burdens are largely relieved if the statute is taken merely as a rule of evidence.[17]

It seems doubtful, then, whether such an evil now exists as to render these statutes an expedient remedy. The real dangers for which such statutes might have been a wholesome remedy were largely removed by the Bankruptcy Act in 1898. The fact that the Bulk Sales Laws have all been enacted since 1898 makes it probable that their passage has been due rather to private enterprise [18] than to public need. The great majority of cases involve wholesale creditors and retail debtors, and it is obvious that these statutes give the former a great power over the latter. For the wholesaler can do much to prevent any sale of which he has notice. The statutes seem thus to furnish a surviving instance in which the law has favored the diligent creditor.[19]

POWERS OF NATIONAL BANKS TO ACQUIRE VARIOUS KINDS OF PROPERTY. — A recent case in Ohio, *Gress* v. *The Village of Fort Loramie*,[1] raises again the question of the kinds of property national banks may

[10] Goldstein *v.* Maloney, 62 Fla. 198, 57 So. 342 (1911); Sprintz *v.* Saxton, *supra.*

[11] See Lupton *v.* Cutter, 25 Mass. 298, 303 (1829). See also BUMP ON FRAUDULENT CONVEYANCES, 4 ed., 182.

[12] See NATIONAL BANKRUPTCY ACT, § 7, a, 1, and § 7, a, 8.

[13] *Id.*, § 3, a, 2.

[14] *Id.*, § 60, a, b.

[15] Seattle Brewing Co. *v.* Donofrio, 34 Wash. 18, 74 Pac. 823 (1904).

[16] See Cooney, Eckstein & Co. *v.* Sweat, 133 Ga. 511, 66 S. E. 257 (1909); Boise Ass'n of Credit Men *v.* Ellis, 26 Idaho, 438, 144 Pac. 6 (1914).

[17] See note 10, *supra.*

[18] See BULLETIN OF THE COMMERCIAL LAW LEAGUE OF AMERICA, Vol. VII, No. 2, p. 13; and Vol. XII, No. 2, p. 4.

[19] In Connecticut the statute is obviously aimed at preventing the small tradesman from selling his business. Strangely enough it was considered expedient to mention the proprietors of shoe-shine and dental parlors, and of hat-cleaning establishments, in express language. See CONN. STAT., REV. 1917, Chap. 204.

[1] 125 N. E. 112. See RECENT CASES, p. 726, *infra.*